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SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-81226; File No. SR-NYSE-2017-08)

July 27, 2017

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, To Amend its Listing Standards for Closed-end Funds

I. Introduction

On May 24, 2017, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend its listing standards for closed-end funds. The proposed rule change was published for comment in the Federal Register on June 12, 2017.<sup>3</sup> On June 29, 2017, NYSE filed Amendment No. 1 to the proposal.<sup>4</sup> The Commission received no comments on the proposed rule change. The Commission is publishing this notice to solicit comment on Amendment No. 1 to the proposed rule change from interested persons, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

The Exchange has proposed to modify its listing standards applicable to a closed-end management investment company registered under the Investment Company Act of 1940 (a

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 80867 (June 6, 2017), 82 FR 26964 (“Notice”).

<sup>4</sup> Amendment No. 1 revised the proposal to insert additional rule text to clarify the definition of public stockholders for purposes of determining adherence to the continued listing requirements for closed-end funds and to make conforming changes. Amendment No. 1 is available at: <https://www.sec.gov/comments/sr-nyse-2017-08/nyse201708-1832561-154372.pdf>.

“Fund”). In its filing, the Exchange explained that this proposal would conform its initial and continued listing standards for Funds to the listing standards for Funds utilized by NYSE MKT LLC (“NYSE MKT”).<sup>5</sup>

Currently, the Exchange will generally authorize the listing of a Fund that meets the distribution and publicly held shares requirements contained in Sections 102.01A and 102.01B of the NYSE Listed Company Manual, respectively, if the Fund’s market value of publicly held shares is \$60,000,000, regardless of whether the listing concerns an initial public offering or an existing Fund.<sup>6</sup> Notwithstanding the requirement for market value of publicly held shares of \$60,000,000, the Exchange will generally authorize the listing of all of the Funds in a group of Funds listed concurrently with a common investment adviser or investment advisers who are “affiliated persons,” as defined in Section 2(a)(3) of the Investment Company Act of 1940, as amended, if: (i) total group market value of publicly held shares equals in the aggregate at least \$200,000,000; (ii) the group market value of publicly held shares averages at least \$45,000,000 per Fund; and (iii) no one Fund in the group has a market value of publicly held shares of less than \$30,000,000.<sup>7</sup>

Under the proposal, the Exchange would generally authorize the listing of a Fund that has a market value of publicly held shares or net assets of \$20,000,000.<sup>8</sup> Alternatively, the Exchange would generally authorize the listing of a group of Funds if: (i) total group market value of publicly held shares or net assets equals in the aggregate at least \$75,000,000; (ii) the group market value of publicly held shares or net assets averages at least \$15,000,000 per Fund; and

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<sup>5</sup> See Notice, supra note 3, at 26964.

<sup>6</sup> See NYSE Listed Company Manual, Section 102.04A.

<sup>7</sup> See id.

<sup>8</sup> See proposed NYSE Listed Company Manual, Section 102.04A.

(iii) each Fund in the group has a market value of publicly held shares or net assets of at least \$10,000,000.<sup>9</sup> With respect to the introduction of requirements concerning a Fund's net asset value ("NAV"),<sup>10</sup> the Exchange explained that Funds disclose NAV on at least a quarterly basis, and often more frequently, and that a Fund's share price typically trades at a premium or discount to NAV, with share price and NAV generally maintaining a close relationship.<sup>11</sup> According to the Exchange, this relationship between share price and NAV makes the market price of a Fund less reliant on the price discovery mechanism of a liquid trading market than is the case with operating companies, and therefore the Exchange believes that NAV is an appropriate additional or alternative measure of suitability for listing.<sup>12</sup> The Exchange explained that these revisions to the initial listing standards for Funds are based on the rules of NYSE MKT.<sup>13</sup>

Under current continued listing standards, the Exchange will promptly initiate suspension and delisting procedures with respect to a Fund if the average market capitalization of the entity over 30 consecutive trading days is below \$15,000,000 or the Fund ceases to maintain its closed-end status.<sup>14</sup> The Exchange has proposed to replace the existing average market capitalization continued listing standard with a requirement that Funds not fall below \$5,000,000 in both total market value of publicly held shares and net assets over any 60 consecutive calendar day

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<sup>9</sup> See id.

<sup>10</sup> The Exchange explained that the NAV of a Fund is the value of all Fund assets less liabilities, divided by the number of shares outstanding. See Notice, supra note 3, at 26964.

<sup>11</sup> See id. The Commission notes that most closed-end funds calculate NAV on a daily basis.

<sup>12</sup> See id.

<sup>13</sup> See id. (citing NYSE MKT Company Guide, Section 101(g)).

<sup>14</sup> See NYSE Listed Company Manual, Section 802.01B.

period.<sup>15</sup> Shares held by directors, officers, or their immediate families and other concentrated holdings of 10 percent or more would be excluded in calculating the number of publicly held shares.<sup>16</sup> The Exchange explained that these changes to the continued listing standards for Funds are based on the rules of NYSE MKT.<sup>17</sup> According to the Exchange, it would monitor compliance with the publicly held shares requirement on an ongoing basis and ask any Fund whose total market value of publicly held shares fell below \$5,000,000 over 60 calendar days to provide evidence that its net assets had exceeded \$5,000,000 over the required period.<sup>18</sup> The Exchange explained that it would promptly initiate suspension and delisting procedures with respect to any Fund that could not demonstrate compliance with the net asset requirement at such time.<sup>19</sup>

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<sup>15</sup> See proposed NYSE Listed Company Manual, Section 802.01B. The Exchange also has proposed to fix a typographical error in Section 802.01B of the NYSE Listed Company Manual. See Notice, supra note 3, at 26965.

<sup>16</sup> See proposed NYSE Listed Company Manual, Section 802.01B; Amendment No. 1, supra note 4, at 7. Similarly, for purposes of the public stockholder requirement, as discussed below, “public stockholders” would exclude holders that are directors, officers, or their immediate families and holders of other concentrated holdings of 10 percent or more. See proposed NYSE Listed Company Manual, Section 802.01B; Amendment No. 1, supra note 4, at 7. The Exchange represented that it relies primarily on the beneficial ownership disclosure included in the issuers’ registration statements and annual meeting proxy statements in calculating publicly held shares and public stockholders, but also refers to other Commission filings where appropriate and its determinations are made in accordance with Rule 13d-3 under the Act. The Exchange stated that this is its practice under all of its rules where these calculations must be made. The Exchange also stated that this is the practice of NYSE MKT and the Exchange believes that its approach is generally consistent with that of the NASDAQ Stock Market. See Amendment No. 1, supra note 4, at 3.

<sup>17</sup> See Notice, supra note 3, at 26964-65 (citing NYSE MKT Company Guide, Section 1003(b)(v)).

<sup>18</sup> See Notice, supra note 3, at 26965 n. 4.

<sup>19</sup> See id. According to the Exchange, no listed Fund is currently below compliance with the Exchange’s continued listing standards. See id.

In addition, current Exchange rules provide that the Exchange will notify the Fund if the average market capitalization falls below \$25,000,000 and will advise the Fund of the delisting standard.<sup>20</sup> The Exchange has proposed to update this notification requirement, according to the Exchange, to reflect the reduced market capitalization component of the delisting standard and thus provide that the Exchange will notify a Fund if the total market value of publicly held shares over a 60 calendar day period falls below \$10,000,000.<sup>21</sup>

Further, the Exchange would specify that the distribution standards for common stocks of operating companies set forth in Section 802.01A of the NYSE Listed Company Manual do not apply to Funds.<sup>22</sup> The Exchange is proposing new continued listing standards that apply only to Funds. Under the proposal, the Exchange would normally give consideration to the prompt initiation of suspension and delisting procedures with respect to the common stock of a Fund if: (i) the number of shares publicly held is less than 200,000; (ii) the total number of public stockholders is less than 300;<sup>23</sup> or (iii) the total market value of shares publicly held is less than \$1,000,000 for more than 90 consecutive calendar days.<sup>24</sup>

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<sup>20</sup> See NYSE Listed Company Manual, Section 802.01B. Funds are not eligible to utilize the follow-up procedures in Sections 802.02 and 802.03 of the NYSE Listed Company Manual that can be used by companies that are below the Exchange's continued listing criteria. See id.

<sup>21</sup> See proposed NYSE Listed Company Manual, Section 802.01B; see also Notice, supra note 3, at 26965.

<sup>22</sup> See proposed NYSE Listed Company Manual, Section 802.01B.

<sup>23</sup> The current distribution standards require 400 total stockholders, which calculation does not exclude public stockholders. See NYSE Listed Company Manual, Section 802.01A.

<sup>24</sup> See proposed NYSE Listed Company Manual, Section 802.01B; Amendment No. 1, supra note 4, at 7; supra note 16 and accompanying text. In Amendment No. 1, the Exchange amended the rule language to make clear that the definitions of publicly held shares and public stockholders, as described above, apply to these sections as appropriate.

## II. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>25</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>26</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Section 6(b)(5) of the Act<sup>27</sup> also requires that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission notes that the proposed initial and continued listing standards are consistent with those listing standards currently utilized by NYSE MKT<sup>28</sup> and that the Commission received no comments on the Exchange's proposed rule change. The Commission believes that the adjustment of the threshold for total market value of publicly held shares below which the Exchange will notify a Fund of the delisting standard is consistent with the adjustment to the continued listing standards in this proposed rule change. Based on the foregoing, the

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<sup>25</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>26</sup> 15 U.S.C. 78f(b)(5).

<sup>27</sup> Id.

<sup>28</sup> See supra notes 13 and 17 and accompanying text.

Commission believes that the proposed rule change presents no novel regulatory issues and therefore finds the proposed rule change to be consistent with the Act.

IV. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2017-08 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2017-08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m.

and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2017-08, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of the notice of Amendment No. 1 in the Federal Register. The Commission believes that the proposed changes to the description of the Exchange's method of calculating publicly held shares and public stockholders add clarity to the process. Accordingly, for the reasons noted above, the Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.<sup>29</sup>

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<sup>29</sup> 15 U.S.C. 78s(b)(2).



VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19b(2) of the Act,<sup>30</sup> that the proposed rule change (SR-NYSE-2017-08), as modified by Amendment No. 1 thereto, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>31</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>30</sup> 15 U.S.C. 78s(b)(2).

<sup>31</sup> 17 CFR 200.30-3(a)(12).

